

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NORTH DAKOTA
3 WESTERN DIVISION
4 Case No. 19-CV-150-DMT-ARS

5 REMOTE VIDEOCONFERENCED VIDEOTAPED 30(b)(6) DEPOSITION OF
6 STATE OF NORTH DAKOTA, BY AND THROUGH JON KETTERLING
7 October 4, 2022

8 STATE OF NORTH DAKOTA,

9 Plaintiff,

10 v.

11 UNITED STATES OF AMERICA,

12 Defendant.

13 A P P E A R A N C E S

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A P P E A R A N C E S (Continued)

Also Present: Laura Crabtree, Esq.
 Jeff Sindiong, videographer
 Corin Stigall

1 Remote videoconferenced videotaped 30(b)(6)
2 deposition of STATE OF NORTH DAKOTA by and through
3 JON KETTERLING, called by the Defendant in the
4 above-entitled matter on Tuesday, the 4th day of October,
5 2022, commencing at the hour of 1:00 p.m., CDT, via
6 audio-video technology, before Elissa Steen, Registered
7 Professional Reporter, said deposition being taken pursuant
8 to Notice and the Federal Rules of Civil Procedure.

10 I N D E X

11 Page Number

12 Examination by Mr. Jafek 5
13 Examination by Mr. Kerlin 27

14 E X H I B I T S

15 Exhibit Number Initial Reference

16 (No exhibits marked for identification.)
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<p style="text-align: right;">4</p> <p>1 PROCEEDINGS</p> <p>2 THE VIDEOGRAPHER: This begins Video Number 1 in</p> <p>3 the deposition of Jonathan Ketterling, in the matter of the</p> <p>4 State of North Dakota versus the United States of America,</p> <p>5 Case Number 19-CV-150-DMT-ARS, in the United States</p> <p>6 District Court for the District of North Dakota, Western</p> <p>7 Division.</p> <p>8 The time on the screen is 1:01 p.m. on Tuesday,</p> <p>9 October 4th, 2022. And this deposition is taking place via</p> <p>10 video conference. All participants are appearing remotely.</p> <p>11 The videographer is Jeff Sindiong. Our court</p> <p>12 reporter is Elissa Steen, both representing Javernick &</p> <p>13 Stenstrom.</p> <p>14 Will Counsel please identify themselves and whom</p> <p>15 you represent.</p> <p>16 MR. KERLIN: This is Paul Kerlin on behalf of</p> <p>17 the Plaintiff, the State of North Dakota, and also</p> <p>18 attending this deposition is my colleague Paul Seby,</p> <p>19 representing the State of North Dakota.</p> <p>20 MR. JAFEK: This is Tim Jafek from the U.S.</p> <p>21 Attorney's Office representing the United States. And with</p> <p>22 me are my colleagues, Jane Bobet and Laura Crabtree, and</p> <p>23 Corin Stigall.</p> <p>24 THE VIDEOGRAPHER: Will the court reporter</p> <p>25 please swear in the witness, and then we can continue.</p>	<p style="text-align: right;">6</p> <p>1 Q Will you tell me if you -- and, actually, one</p> <p>2 thing we should probably do -- and it may be because kind</p> <p>3 of slowness in the video. I'll try to pause after -- after</p> <p>4 any response you make because it sounds like there might be</p> <p>5 some sort of lag.</p> <p>6 Is there any -- will you tell me if you don't</p> <p>7 understand a question?</p> <p>8 A I will.</p> <p>9 Q Is there any reason you can't respond truthfully</p> <p>10 to my questions today?</p> <p>11 A No.</p> <p>12 Q Have you ever been deposed before?</p> <p>13 A Yes.</p> <p>14 Q How many times?</p> <p>15 A Once.</p> <p>16 Q What was the context?</p> <p>17 A It was a DUI, nonwork-related type of a thing</p> <p>18 with a -- with a friend of mine.</p> <p>19 Q Okay. Who -- who was alleged to be DUI?</p> <p>20 A A friend of mine.</p> <p>21 Q All right. What's your current employment</p> <p>22 situation or your current employment title?</p> <p>23 A I'm the -- I'm currently the North Dakota State</p> <p>24 bridge engineer.</p> <p>25 Q And was that the same in 2016 and 2017?</p>
<p style="text-align: right;">5</p> <p>1 JON KETTERLING,</p> <p>2 the Witness herein, having been first duly sworn, was</p> <p>3 examined and testified on his oath as follows:</p> <p>4 THE REPORTER: Sorry, the dog.</p> <p>5 THE VIDEOGRAPHER: You may continue.</p> <p>6 MR. JAFEK: Thank you.</p> <p>7 EXAMINATION</p> <p>8 BY MR. JAFEK:</p> <p>9 Q Good afternoon, Mr. Ketterling. As I said, I'm</p> <p>10 Tim Jafek. I represent the United States, and I'll be</p> <p>11 asking you questions today.</p> <p>12 So just to explain the process a little bit, we</p> <p>13 have a court reporter, Ms. Steen. She will be writing down</p> <p>14 everything that's said. So because of that, it's important</p> <p>15 to give a verbal response. Sometimes we shake our head,</p> <p>16 nod our head, or say uh-huh or uh-uh. So please make a</p> <p>17 verbal response.</p> <p>18 If you need to take any breaks -- sorry. I</p> <p>19 thought you were about to say something.</p> <p>20 A No. No, I'm not. Sorry.</p> <p>21 Q If we need to take any breaks, just let me know,</p> <p>22 and we should be able to accommodate that. The exception</p> <p>23 would be, if there's a question pending, we would ask you</p> <p>24 to finish answering that.</p> <p>25 A Sounds good.</p>	<p style="text-align: right;">7</p> <p>1 A Yes, it was.</p> <p>2 Q What did you do to prepare for the deposition</p> <p>3 today?</p> <p>4 A I reviewed my notes, a few pictures, and I had a</p> <p>5 quick phone call with the counsel on the line here.</p> <p>6 Q When you refer to your "notes," what do you mean</p> <p>7 by that?</p> <p>8 A Just look them over.</p> <p>9 Q What do your notes consist of?</p> <p>10 A Just, you know, it's primarily action items that</p> <p>11 I was doing or that I was going to do at the time that</p> <p>12 we're talking about, during that time frame, on this</p> <p>13 subject matter.</p> <p>14 Q Were they handwritten or electronic?</p> <p>15 A Handwritten.</p> <p>16 Q How many -- about how many pages of those are</p> <p>17 they?</p> <p>18 A Half a page.</p> <p>19 Q All right. I'm going to use some terms as we</p> <p>20 talk today. When I refer to the DAPL protest or the</p> <p>21 protests, what I mean are the protests from around August</p> <p>22 2016 to around March 2017 in North Dakota there.</p> <p>23 And when I say the "State," I mean the State of</p> <p>24 North Dakota, the counties, and any of their political</p> <p>25 subdivisions.</p>

Objection to all
testimony as to
hearsay, 802

<p style="text-align: right;">8</p> <p>1 So, Mr. Ketterling, do you understand that</p> <p>2 you've been designated by the State to testify regarding</p> <p>3 identification of the cause of State property damaged</p> <p>4 during the protests and the need for repair work for damage</p> <p>5 to roadways like the Backwater Bridge?</p> <p>6 A I do.</p> <p>7 Q What I'm first going to ask you is just for a</p> <p>8 list of what property damage was caused to the State by the</p> <p>9 DAPL protests, and then I'm going to go on and ask about</p> <p>10 those individually.</p> <p>11 So what property damage was caused to the State</p> <p>12 by the protests?</p> <p>13 A I will speak to what I observed.</p> <p>14 When I was sent down to the bridge, I was made</p> <p>15 aware on the 31st of October, and, on the 1st of November</p> <p>16 of 2016, I made a trip down to the bridge to determine the</p> <p>17 extent of the damage.</p> <p>18 I was escorted by law enforcement and members of</p> <p>19 our district office. And as I came on scene, it was</p> <p>20 apparent that there was -- first thing I saw, I guess, was</p> <p>21 two snowplow trucks burned up, and that was kind of at the</p> <p>22 end of the guardrail. And then that -- what I saw was that</p> <p>23 also burned off the guardrail posts that hold up the</p> <p>24 guardrail.</p> <p>25 And so, as I walked around that and moved</p>	<p style="text-align: right;">10</p> <p>1 bridge?</p> <p>2 A Yes.</p> <p>3 Q Any other -- any other damage to State property?</p> <p>4 A That I was privy to or observed, the biggest</p> <p>5 question was is there damage to the bridge itself. And so</p> <p>6 you could see damage. There was some asphalt on top of the</p> <p>7 -- the concrete beams for that bridge type, and you could</p> <p>8 see the asphalt was damaged.</p> <p>9 Our concern mainly was were the beams damaged</p> <p>10 below that 2 inches of asphalt. Since the asphalt, it was,</p> <p>11 -- you know, all the oil was burned out, so it was kind of</p> <p>12 like black gravel. And we didn't know that. That's why we</p> <p>13 had to have a second trip. So that's -- other than that,</p> <p>14 no, that's what I observed.</p> <p>15 Q Okay. And to be clear, I'm asking not just what</p> <p>16 you observed, but, you know, for the State -- for the State</p> <p>17 as a whole.</p> <p>18 Was any other State property damaged as a result</p> <p>19 of the protests?</p> <p>20 A I don't know of anything else.</p> <p>21 Q Okay. So I'll go back and just talk about each</p> <p>22 one of these specifically, and maybe we'll save the bridge</p> <p>23 -- the bridge for the last.</p> <p>24 And just to be clear what -- the bridge where</p> <p>25 most of the damage was at, how should we refer to that</p>
<p style="text-align: right;">9</p> <p>1 towards the bridge closer, I observed the digital message</p> <p>2 board burned up. And as I moved beyond that, there was a</p> <p>3 vehicle on the end of the bridge sideways, kind of like a</p> <p>4 small -- you couldn't tell, but it looked like a smaller</p> <p>5 SUV. It was significantly burned up and burned right --</p> <p>6 you know, even the alloy wheels were melted down onto the</p> <p>7 deck.</p> <p>8 And there was some rocks and stuff, and it</p> <p>9 looked like other things had burned in that area, but</p> <p>10 specific to that spot, there was a vehicle there. And so</p> <p>11 those are the -- that's the damage that I saw there.</p> <p>12 And then we were also told there was a fire on a</p> <p>13 -- on a county bridge nearby. I think it was a little</p> <p>14 north and -- north and west of here. We went over there</p> <p>15 and looked at that.</p> <p>16 There was -- a fire that had occurred on the</p> <p>17 deck. You could see that. And the concrete was pink</p> <p>18 toned, kind of like it had been -- you know, fire had been</p> <p>19 started on it. We didn't know if there was damage to that</p> <p>20 deck or not, but we did make that observation that that</p> <p>21 fire had occurred on that deck also.</p> <p>22 Q Okay. So what I heard you say, in terms of</p> <p>23 damage to State property, a bridge, two trucks burned,</p> <p>24 guardrail posts, a digital message board, a vehicle on a</p> <p>25 bridge, and then a fire on a county bridge, on a separate</p>	<p style="text-align: right;">11</p> <p>1 bridge?</p> <p>2 A What we call it in our inventory is the</p> <p>3 Cantepeta Bridge, what was commonly referred to during the</p> <p>4 that time was the Backwater Bridge in media, so I can go</p> <p>5 either way.</p> <p>6 Q Okay. Why don't we just call it the Backwater</p> <p>7 Bridge. That rolls off my tongue a bit better.</p> <p>8 A Okay.</p> <p>9 Q And then you also said there was a county</p> <p>10 bridge?</p> <p>11 A There was a county bridge just north and west of</p> <p>12 this bridge.</p> <p>13 Q Okay. What -- what's the name of that bridge?</p> <p>14 A I don't think it has a name. Usually county</p> <p>15 bridges are designated by three numbers that make up</p> <p>16 township, section, and -- there's a naming -- and I'd have</p> <p>17 to find it for you, but there's -- there's not a generic</p> <p>18 name for it. And I think it lies on the same creek, the</p> <p>19 Cantepeta Creek, as this one does.</p> <p>20 Q Okay. Do you know what the number of it is?</p> <p>21 A I do not offhand. I certainly could find it.</p> <p>22 Q Okay.</p> <p>23 A But I do not know it right now.</p> <p>24 Q Okay. We'll just refer to it as the county</p> <p>25 bridge.</p>

<p style="text-align: right;">12</p> <p>1 All right. So we'll go through each one of</p> <p>2 these. First, the two trucks that were burned that you</p> <p>3 observed, were those -- were those trucks owned by the</p> <p>4 State?</p> <p>5 A What I was told is they were owned by the State.</p> <p>6 Q Okay. And what -- what amount of dollars of</p> <p>7 damage were caused to those trucks?</p> <p>8 A I wouldn't -- I wouldn't know that. I observed</p> <p>9 them in a fully burned up state. I don't know what</p> <p>10 condition they were. I don't know anything about the value</p> <p>11 of those trucks.</p> <p>12 Q Okay. What did the State do to -- to repair or</p> <p>13 to replace them?</p> <p>14 A I don't know that answer.</p> <p>15 Q Okay. How, if at all, does the State know that</p> <p>16 the damage to those trucks was caused by protestors?</p> <p>17 A From what I was told from numerous sources is</p> <p>18 that they were -- that this damage, these fires, were set</p> <p>19 by the protestors. So, you know, that's what I was told.</p> <p>20 Q Who told you that?</p> <p>21 A Multiple people, from the district folks that</p> <p>22 escorted us to the site, to law enforcement that was</p> <p>23 present at the site when we were down there.</p> <p>24 Q Just to back up, in terms of the -- the repair</p> <p>25 or the replacement of the trucks, do you know how the</p>	<p style="text-align: right;">14</p> <p>1 A I don't know which camp they came from.</p> <p>2 Q All right. Let's ask about the second one,</p> <p>3 then, the guardrail posts.</p> <p>4 What's the amount of dollars in damage that was</p> <p>5 caused to the guardrail posts?</p> <p>6 A I don't know that answer. There was numerous</p> <p>7 posts on either side adjacent to the trucks where it</p> <p>8 appeared the truck burned up, then that burned off the</p> <p>9 post. And so, you know, I -- I am -- I'm not sure what the</p> <p>10 value of that damage is or was.</p> <p>11 Q Is there anyone who you think would?</p> <p>12 A I think that that same avenue that I explained</p> <p>13 before. The Bismarck district and the head of our</p> <p>14 maintenance division would maybe have those numbers that</p> <p>15 were put together at that time.</p> <p>16 Q Okay. What was done to repair or replace those</p> <p>17 guardrail posts?</p> <p>18 A I think they drilled out the post locations and</p> <p>19 pounded new posts into those spots, similar to what we</p> <p>20 would do if somebody hit the guardrail and broke it off.</p> <p>21 Q And how much did those -- did those replacements</p> <p>22 cost?</p> <p>23 A I do not know. That repair occurred outside of</p> <p>24 the bridge -- of the bridge division.</p> <p>25 Q What division did the repairs, then?</p>
<p style="text-align: right;">13</p> <p>1 amount was documented?</p> <p>2 A How the amount of?</p> <p>3 Q Of damage was documented. Like, if there was,</p> <p>4 you know, invoices for repairs, appraisal report?</p> <p>5 A You know, I -- I know that there was a number</p> <p>6 that was generated, I think, by our district office, but I</p> <p>7 was not privy to seeing any of those numbers for equipment.</p> <p>8 Q Okay. Who -- who would have that information,</p> <p>9 do you think?</p> <p>10 A There's a new district engineer in that spot, so</p> <p>11 I'm not certain that he would have it or know where it's</p> <p>12 at. That could be maybe obtained through our maintenance</p> <p>13 division head, Brad Darr. I think he coordinated a lot of</p> <p>14 things through -- you know, through -- we coordinate a lot</p> <p>15 of things through him. You might -- you might be able to</p> <p>16 get it from him.</p> <p>17 Other than that, you know, a lot of the people</p> <p>18 that were involved are no longer there.</p> <p>19 Q Right.</p> <p>20 And for those trucks, what agency or department</p> <p>21 owned those?</p> <p>22 A I believe -- once again, I believe it was the</p> <p>23 Department of Transportation.</p> <p>24 Q Okay. Do you know from which camp the</p> <p>25 protestors came who caused the damage to those trucks?</p>	<p style="text-align: right;">15</p> <p>1 A It was coordinated through the Bismarck</p> <p>2 district.</p> <p>3 Q Of the Department of Transportation?</p> <p>4 A Of the Department of Transportation, yes. It's</p> <p>5 Bismarck district office of the Department of</p> <p>6 Transportation.</p> <p>7 Q Okay. And how -- how was the amount of repair</p> <p>8 work documented?</p> <p>9 A I'm not sure.</p> <p>10 Q Okay. Who do you think would know that?</p> <p>11 A I think the Bismarck district.</p> <p>12 Q Okay.</p> <p>13 A And maybe, like I said, the head of our</p> <p>14 maintenance division, Brad Darr, would maybe have that</p> <p>15 data.</p> <p>16 Q How do you know that that damage was caused by</p> <p>17 protestors?</p> <p>18 A Once again, I was -- you know, I was told that</p> <p>19 the fire was started by the protestors. And it was easy to</p> <p>20 see, with the orientation of the equipment, that the</p> <p>21 equipment burned, and then it burned off the guardrail</p> <p>22 posts that were adjacent or real close.</p> <p>23 Q And from which camp did the protestors come who</p> <p>24 caused that damage?</p> <p>25 A I don't know that answer.</p>

<p style="text-align: right;">16</p> <p>1 Q And, actually, why don't we -- I think, since</p> <p>2 we're talking about damages in the same general area, I can</p> <p>3 just kind of ask these, these kind of questions, with</p> <p>4 respect to all of the damage.</p> <p>5 So with respect to all of the damage that you've</p> <p>6 told me about today, how do you know that damage was caused</p> <p>7 by protestors?</p> <p>8 MR. KERLIN: Objection, asked and answered.</p> <p>9 Q (By Mr. Jafek) You can answer.</p> <p>10 A Same answer as I had before. I was told that</p> <p>11 the protestors started the fire, both with the vehicle and</p> <p>12 the message board and the -- and the snowplow trucks.</p> <p>13 And the only thing I can add to it is, when I</p> <p>14 was down there, this was all after the fact, but the</p> <p>15 vehicle -- you know, the vehicle -- I can still remember</p> <p>16 the vehicle, you know, had a "No DAPL" painted on the side</p> <p>17 of the vehicle.</p> <p>18 Q When you say "the vehicle," which vehicle are</p> <p>19 you referring to?</p> <p>20 A The vehicle that was burned on the bridge.</p> <p>21 Q Okay. So that's separate from the two -- from</p> <p>22 the two State trucks?</p> <p>23 A It is. It is.</p> <p>24 Q Okay. And you also mentioned snowplow trucks?</p> <p>25 A That's snowplow trucks -- there was two snowplow</p>	<p style="text-align: right;">18</p> <p>1 Q Okay. Who do you think may know that answer?</p> <p>2 A I think the Bismarck district, along with our</p> <p>3 head of our maintenance division, would likely have -- know</p> <p>4 that answer since a lot of the districts have digital</p> <p>5 message boards, and then they've also probably tabulated</p> <p>6 the value of it at that time.</p> <p>7 Q What is -- what is the amount of damage caused</p> <p>8 to the digital message board in dollars?</p> <p>9 A I do not know that answer.</p> <p>10 Q Okay. Do you know what was done to repair or</p> <p>11 replace it?</p> <p>12 A Well, I know that it was a total loss. I do not</p> <p>13 know if it was replaced.</p> <p>14 Q Okay. How do you know it was a total loss?</p> <p>15 A It was burned to nothing.</p> <p>16 Q Okay. All right. Okay. You mentioned a</p> <p>17 vehicle on the bridge.</p> <p>18 Was that a State-owned vehicle?</p> <p>19 A A what? Excuse me.</p> <p>20 Q A State -- a State-owned vehicle?</p> <p>21 A No. It was -- appeared to be a private vehicle.</p> <p>22 Q All right. So let's move on to the county</p> <p>23 bridge.</p> <p>24 What's the amount of damage that was caused to</p> <p>25 the county bridge?</p>
<p style="text-align: right;">17</p> <p>1 trucks, a digital message sign, and then a vehicle. That's</p> <p>2 the three things that were burned in succession there.</p> <p>3 Q Okay. So the two State trucks were snowplow</p> <p>4 trucks?</p> <p>5 A Yes.</p> <p>6 Q Okay. Were they, like -- I don't know -- just</p> <p>7 kind of regular trucks with snowplows on the front or --</p> <p>8 A They were -- they did not have snowplows on</p> <p>9 them. They had them taken off, but that's what the DOT</p> <p>10 uses those for. It has a big box on the back, and it's a</p> <p>11 bigger truck. And so there's two of them, and I'm sure</p> <p>12 they were used for snowplowing at one time.</p> <p>13 Q Okay. All right. And then the other question I</p> <p>14 wanted to ask, not just with respect to the guardrails and</p> <p>15 the trucks, but with respect to all of the damages caused</p> <p>16 by the State that you've described today, which camp did</p> <p>17 the protestors come from that caused that damage?</p> <p>18 MR. KERLIN: Objection, form.</p> <p>19 Q (By Mr. Jafek) You can answer.</p> <p>20 A I do not know what camp they came from.</p> <p>21 Q All right. So moving on to the next one you</p> <p>22 mentioned, the digital message board.</p> <p>23 What was the amount of damage caused to the</p> <p>24 digital message board?</p> <p>25 A I do not know that answer.</p>	<p style="text-align: right;">19</p> <p>1 A Yeah. At the time we were there it was a -- you</p> <p>2 know, it was a bridge with a conventional concrete deck.</p> <p>3 It looked like the concrete was -- turned pink, which</p> <p>4 indicates some fire damage occurred to it. I think that</p> <p>5 there was an effort made to chain the deck, which would</p> <p>6 indicate that, if it had delaminated any of the concrete</p> <p>7 from the rebar, as far as I know, there was minor</p> <p>8 delamination to it.</p> <p>9 And I never had much more to do with that county</p> <p>10 bridge after that. So I don't know if there was any</p> <p>11 attempt to do any spot repairs or any kind of repairs to</p> <p>12 that deck.</p> <p>13 Q Okay. So similar questions as the other ones.</p> <p>14 What's the amount of dollar damage done to that,</p> <p>15 to the county bridge?</p> <p>16 A I do not know that answer.</p> <p>17 Q And do you know who -- who did the repairs, if</p> <p>18 any?</p> <p>19 A I do not. And I do not know that answer.</p> <p>20 Q Okay. Do you know if it was repaired or</p> <p>21 replaced?</p> <p>22 A All inventory comes through my office when</p> <p>23 things are replaced. I know it was not replaced on the</p> <p>24 county system.</p> <p>25 Q Okay. So now let's move on to I think probably</p>

<p style="text-align: right;">20</p> <p>1 the biggest damage, the damage to the bridge.</p> <p>2 So what specific damage was done to the</p> <p>3 Backwater Bridge?</p> <p>4 A On the -- you know, the worry was that it had</p> <p>5 damaged the beams. And this bridge is a somewhat</p> <p>6 unconventional bridge in that I think it was part of -- it</p> <p>7 was a county bridge at one time, and it was part of an</p> <p>8 Owyhee relocation. And they had adjacent box beams, which</p> <p>9 you take just concrete box beams, and you put them</p> <p>10 together, and you don't have a concrete deck on it. You</p> <p>11 just have the beams.</p> <p>12 And so we had 2 inches of asphalt over the top</p> <p>13 of that and then that fire. Our worry was that the fire</p> <p>14 had damaged the beams and that the beams' load-carrying</p> <p>15 capacity was diminished, hence why we needed to do</p> <p>16 additional testing.</p> <p>17 So the damage to the bridge that was evident was</p> <p>18 the asphalt that was over the top, but it was unknown if</p> <p>19 there was anything further until we did additional testing.</p> <p>20 Q Okay. What was the result of that additional</p> <p>21 testing?</p> <p>22 A Well, the result was we took five cores from the</p> <p>23 tops of the most heavily damaged area that went through the</p> <p>24 asphalt and into the concrete, top of the concrete beam,</p> <p>25 and we sent the cores into a company, American</p>	<p style="text-align: right;">22</p> <p>1 occurred. We did not -- we did not patch them at the time</p> <p>2 of coring.</p> <p>3 Q And who would -- who would know that? The same</p> <p>4 person who knew about the asphalt?</p> <p>5 A Same -- same people, yeah.</p> <p>6 Q Okay. How would the -- how would the cost for</p> <p>7 the milling and the asphalt, how would that be documented?</p> <p>8 A Well, if they did it by contract, we would have</p> <p>9 -- we would have some bid documents probably or something</p> <p>10 that they used. If they did it with maintenance forces,</p> <p>11 they would have it probably charged to a project number.</p> <p>12 But, you know, like I said, I think that this was all</p> <p>13 tabulated at that time.</p> <p>14 So I'm not sure exactly how they went forward</p> <p>15 with that repair since it was less about the structural,</p> <p>16 you know, that part of it, than it was the making sure that</p> <p>17 it was safe with guardrail and then it had a good riding</p> <p>18 surface with the asphalt. So that was taken -- it was</p> <p>19 taken care of, I think, by Bismarck district office.</p> <p>20 Q Okay. So if I understand right, you're not sure</p> <p>21 if it was done kind of by contract or by in-house, but you</p> <p>22 think in-house?</p> <p>23 A I think so, but I don't know.</p> <p>24 Q Okay. All right. And then the cost of getting</p> <p>25 the cores analyzed, do you know what that was?</p>
<p style="text-align: right;">21</p> <p>1 Petrographic, and they analyzed the beams and said that the</p> <p>2 concrete -- the integrity of the concrete was good. So the</p> <p>3 damage from the fire to the beam to the actual beam was</p> <p>4 nonexistent. It was good. The fire did not damage the</p> <p>5 beams.</p> <p>6 Q So what was the amount of dollar -- the amount</p> <p>7 of damage in dollars to the bridge itself?</p> <p>8 A You know, it's the -- the area where the fires</p> <p>9 were, they had to mill that up and patch that back with</p> <p>10 asphalt. I don't know what the cost of that repair was.</p> <p>11 Q Any other -- any other repairs that were made to</p> <p>12 the Backwater Bridge as a result of the protests besides</p> <p>13 the guard rail posts that we talked about?</p> <p>14 A We had to -- we had to plug our holes that we</p> <p>15 had poured into the beams. And other than that, that would</p> <p>16 be the extent of the damages to the -- to the bridge.</p> <p>17 Q Okay. Going back to the asphalt issue, who</p> <p>18 would know the cost of milling it up and patching it?</p> <p>19 A That would be the Bismarck district office and</p> <p>20 potentially Brad Darr from maintenance division, our</p> <p>21 maintenance division.</p> <p>22 Q Okay. And then do you know the cost of plugging</p> <p>23 the holes?</p> <p>24 A I do not know the cost of plugging the holes.</p> <p>25 It probably was all part of the patching effort that</p>	<p style="text-align: right;">23</p> <p>1 A Oh, I should know that. \$12,000 maybe,</p> <p>2 something like that. I think 12,000. 12,000 -- a little</p> <p>3 over \$12,000, I think, if I remember right.</p> <p>4 MR. JAFEK: All right. Why don't -- I think I'm</p> <p>5 at the end or close to the end. Why don't we just pause.</p> <p>6 I'm going to confer with -- I'm going to look over my</p> <p>7 notes, confer with my cocounsel. And so why don't we take</p> <p>8 a five-minute break.</p> <p>9 THE VIDEOGRAPHER: We're now going -- we are now</p> <p>10 going off record. The time is 1:31.</p> <p>11 (A recess was taken from 1:31 p.m. until</p> <p>12 1:36 p.m.)</p> <p>13 THE VIDEOGRAPHER: We are now back on the</p> <p>14 record. The time is 1:36.</p> <p>15 You may continue.</p> <p>16 MR. JAFEK: Thank you.</p> <p>17 Q (By Mr. Jafek) So a few more areas of</p> <p>18 questions. Probably -- probably pretty brief.</p> <p>19 I asked this question for some of them but not</p> <p>20 for all of them. So to go back to the digital message</p> <p>21 board, who owned that?</p> <p>22 A My understanding was the DOT.</p> <p>23 Q The county bridge, is that owned --</p> <p>24 A By the county. Yes.</p> <p>25 Q Which county?</p>

<p style="text-align: right;">24</p> <p>1 A Likely Morton, but I'd have to verify.</p> <p>2 Q And then --</p> <p>3 A Yeah. It's -- it was Morton County. Sorry. It</p> <p>4 was Morton County. Yes.</p> <p>5 Q And then the Backwater Bridge itself, who owned</p> <p>6 that?</p> <p>7 A The State of North Dakota.</p> <p>8 Q With respect to that, the Backwater Bridge, how</p> <p>9 long was it before all the repairs to it were made?</p> <p>10 A I don't know that answer. I do know that, you</p> <p>11 know, on January 12th we declared the -- we got the results</p> <p>12 back and declared the bridge competent, but as far as the</p> <p>13 repairs -- when the repairs were finished, and I'm not</p> <p>14 certain on that.</p> <p>15 Q All right. And I think you said at the</p> <p>16 beginning, when we were talking, that the bridge was</p> <p>17 damaged -- did you say October 30th or around then?</p> <p>18 A I'd say it was a few days before that.</p> <p>19 Q Okay. So late October?</p> <p>20 A Yeah, late October.</p> <p>21 Q Was all of the damage that -- all of the damage</p> <p>22 to State property that you've talked about today, did those</p> <p>23 -- did that all happen at the same time?</p> <p>24 A Everything that I talked about today concerning</p> <p>25 the Backwater Bridge I believe happened at the same time.</p>	<p style="text-align: right;">26</p> <p>1 inspect the underside and looked for any damage that I</p> <p>2 could see underneath the deck. So there was a -- I</p> <p>3 remember a photo or two of that guardrail post. That's</p> <p>4 about it.</p> <p>5 Q Okay. And you mentioned an investigation of the</p> <p>6 kind of the state, the condition, of the bridge.</p> <p>7 What specifically was done in that</p> <p>8 investigation?</p> <p>9 A Are you talking about the coring operation?</p> <p>10 Q All -- any investigation that was done to</p> <p>11 determine the condition of the Backwater Bridge.</p> <p>12 A Well, there was that November 1st, 2016,</p> <p>13 inspection that was done by myself and another member of my</p> <p>14 team. And we had went to the site. So we did a visual</p> <p>15 inspection. And then we came back, on December 22nd, and</p> <p>16 we did more of a destructive type of testing where we</p> <p>17 corded holes into the concrete and the asphalt to determine</p> <p>18 the -- you know, get a sample so we could check the</p> <p>19 integrity of the concrete.</p> <p>20 So it was just those two dates on where the</p> <p>21 bridge was inspected by me or members of my staff.</p> <p>22 Q Okay. And then you mentioned the repairs that</p> <p>23 were made to the -- to the asphalt, the mill and the</p> <p>24 reasphalting.</p> <p>25 Did that extend the useful life of the bridge?</p>
<p style="text-align: right;">25</p> <p>1 I am not certain if the fire or damage on the county bridge</p> <p>2 occurred at the exact same time or not.</p> <p>3 Q And then we may have -- we may have talked about</p> <p>4 this briefly, but how specifically was the damage caused to</p> <p>5 the -- to the Backwater Bridge from what you saw?</p> <p>6 A From what I saw, the fire was started in, you</p> <p>7 know, in the snowplow trucks we'll call them. Started --</p> <p>8 the trucks were lit up, and that fire from those trucks</p> <p>9 burned off the guardrail posts.</p> <p>10 The digital message sign stood alone, and that</p> <p>11 was lit up. And then the vehicle that was on the end of</p> <p>12 the bridge was lit up, and it appeared there was some rocks</p> <p>13 and other debris around it. So I'm not sure what was piled</p> <p>14 up against it. But that was burned up, and then that</p> <p>15 burned down into the deck.</p> <p>16 And, like I said, the asphalt was like gravel in</p> <p>17 those areas. There was no oil left in it. And so, you</p> <p>18 know, our fear was that that 2 inches of asphalt did not</p> <p>19 protect those, those box beams and the prestressing</p> <p>20 strands, and so we wanted to investigate further.</p> <p>21 Q Okay. You mentioned some photos at the</p> <p>22 beginning of the deposition. What were those photos of?</p> <p>23 A The photos were of the vehicle, the deck, the</p> <p>24 digital message board, the snowplow truck, that stuff.</p> <p>25 Underside of the bridge also. I went under there to</p>	<p style="text-align: right;">27</p> <p>1 A No. That creates a smooth ride on the top of</p> <p>2 the bridge. That does not extend the useful life of the</p> <p>3 bridge.</p> <p>4 Q Okay. So by repairing it, you didn't -- you</p> <p>5 didn't get a better bridge than you had before the protests</p> <p>6 happened?</p> <p>7 A No.</p> <p>8 MR. JAFEK: Okay. All right. Well, I don't</p> <p>9 think I have any other questions. Thank you very much for</p> <p>10 your time.</p> <p>11 EXAMINATION</p> <p>12 BY MR. KERLIN:</p> <p>13 Q Just a couple questions for you, Mr. Ketterling.</p> <p>14 This is Paul Kerlin on behalf of the State of North Dakota.</p> <p>15 Prior to your deposition, did you have an</p> <p>16 opportunity to review the notice of the 30(b)(6) deposition</p> <p>17 of the State of North Dakota?</p> <p>18 A Yes.</p> <p>19 Q That document. Okay.</p> <p>20 And you had been identified or designated as a</p> <p>21 witness to answer questions, specifically 3d. I just want</p> <p>22 to read that real quick.</p> <p>23 This topic includes, for purposes of the State's</p> <p>24 claimed damages, "the identification of the cause of State</p> <p>25 property damage during the protest and the need for repair</p>

<p style="text-align: right;">28</p> <p>1 work, for damage to roadways like the Backwater Bridge."</p> <p>2 Do you recall looking at that section of the</p> <p>3 notice?</p> <p>4 A Yes.</p> <p>5 Q Okay. And you were prepared to testify about</p> <p>6 that fully today, correct?</p> <p>7 A Yes.</p> <p>8 Q Okay. And you described and talked with -- with</p> <p>9 Mr. Jafek in some detail about the different activities</p> <p>10 that you undertook along with others at the Department of</p> <p>11 Transportation for North Dakota to evaluate what had</p> <p>12 happened to that road surface and bridge, as well as the</p> <p>13 equipment that was around it, correct?</p> <p>14 A Yes.</p> <p>15 MR. KERLIN: And, for the record, I believe that</p> <p>16 the notice has been marked as Exhibit 88, but I just want</p> <p>17 to make that clear on the record, and that Mr. Ketterling</p> <p>18 was designated for Topic 3, Subpart d. So that's on the</p> <p>19 record.</p> <p>20 Mr. Ketterling, I don't have any other questions</p> <p>21 for you this afternoon, and the State would reserve all</p> <p>22 further questions until the time of trial.</p> <p>23 THE VIDEOGRAPHER: All right. No further</p> <p>24 questions?</p> <p>25 MR. JAFEK: I have no further questions.</p>	<p style="text-align: right;">30</p> <p>1 I, JON KETTERLING, do hereby certify that I have</p> <p>2 read the above and foregoing deposition and that the above</p> <p>3 and foregoing transcript and accompanying Amendment</p> <p>4 sheet(s), if any, constitute a true and complete record of</p> <p>5 my testimony.</p> <p>6</p> <p>7 Amendment sheet(s) attached []</p> <p>8 No changes, therefore no Amendment sheet(s) attached []</p> <p>9</p> <p>10 _____</p> <p>11 JON KETTERLING</p> <p>12</p> <p>13 Subscribed and sworn to before me in the county</p> <p>14 of _____, State of Colorado, this _____ day of</p> <p>15 _____, 2022.</p> <p>16</p> <p>17</p> <p>18</p> <p>19 _____</p> <p>20 Notary Public</p> <p>21</p> <p>22 _____</p> <p>23 Commission Expiration Date</p> <p>24</p> <p>25</p>
<p style="text-align: right;">29</p> <p>1 THE VIDEOGRAPHER: All right. Then this</p> <p>2 concludes the deposition of Jon Ketterling. The time on</p> <p>3 the screen is 1:45, and we are now off record.</p> <p>4 (The remote videoconferenced videotaped 30(b)(6)</p> <p>5 deposition was concluded at 1:45 p.m., on Tuesday, October</p> <p>6 4, 2022.)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">31</p> <p>1 REMOTE VIDEOCONFERENCED VIDEOTAPED 30(b)(6)</p> <p>2 DEPOSITION OF STATE OF NORTH DAKOTA,</p> <p>3 BY AND THROUGH JON KETTERLING</p> <p>4</p> <p>5 REPORTER'S CERTIFICATE</p> <p>6 I, Elissa Steen, Registered Professional</p> <p>7 Reporter, do hereby certify that prior to the commencement</p> <p>8 of the examination the Witness was by me first duly sworn</p> <p>9 to testify to the truth; that said deposition was taken in</p> <p>10 shorthand by me at the time and place hereinabove set forth</p> <p>11 and was thereafter reduced to typewritten form under my</p> <p>12 supervision, as per the foregoing transcript; that the same</p> <p>13 is a full, true, and correct transcription of my shorthand</p> <p>14 notes then and there taken.</p> <p>15 I further certify that I am not related to,</p> <p>16 employed by, nor of counsel for any of the parties or</p> <p>17 attorneys herein, nor otherwise interested in the event of</p> <p>18 the within action.</p> <p>19</p> <p>20</p> <p>21 _____</p> <p>22 Registered Professional Reporter</p> <p>23</p> <p>24</p> <p>25</p>

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